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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052038
Party	Defendant KeyOn Communications, Inc.
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Date	06/09/2010
Attachments	Answer.pdf (6 pages)(44223 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SPEEDNET, LLC

Petitioner,

v.

KEYON COMMUNICATIONS, INC.

Respondent.

Cancellation No. 92052038

Registration No. 2950620

**ANSWER TO FIRST AMENDED
PETITION TO CANCEL**

KeyOn Communications, Inc. (“Respondent”) hereby answers the First Amended Petition to Cancel filed by Speednet, LLC (“Petitioner”) against United States Trademark Registration No. 2,950,620 as follows:

1. Respondent admits that it is the owner of United States Trademark Registration No. 2,950,620, for the trademark SPEEDNET, issued on the Supplemental Register by the United States Patent and Trademark Office on May 10, 2005, for use on communication services, namely, providing high-speed internet access, local dial-up internet access, and national toll free number dial-up internet access. Respondent further admits that the underlying application filed by its predecessor in interest claimed a date of first use “at least as early as January 2003” and a date of first use in interstate commerce “at least as early as January 2003”. Respondent denies all other allegations set forth in Paragraph 1 of the First Amended Petition to Cancel.

2. Respondent denies the allegations set forth in Paragraph 2 of the First Amended Petition to Cancel.

3. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the First Amended Petition to Cancel and, therefore, denies the same.

4. Respondent admits that United States Trademark Registration No. 2,950,620 was issued from an application filed by its predecessor in interest which claimed a date of first use “at least as early as January 2003” and a date of first use in interstate commerce “at least as early as January 2003”. Respondent denies all other allegations set forth in Paragraph 4 of the First Amended Petition to Cancel.

5. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the First Amended Petition to Cancel and, therefore, denies the same.

6. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the First Amended Petition to Cancel and, therefore, denies the same.

7. Applicant denies the allegations of Paragraph 7 of the First Amended Petition to Cancel.

[8-14. Pursuant to the Board’s order dated May 11, 2010, the Board *sua sponte* struck paragraphs 8-14 from the First Amended Petition to Cancel. Respondent therefore does not answer the allegations set forth in these paragraphs.]

AFFIRMATIVE DEFENSES

NOW COMES Applicant, by and through its attorneys, and by way of affirmative defenses, states as follows:

1. The First Amended Petition to Cancel, and each cause of action contained therein, fails to state a claim upon which relief can be granted.

2. The First Amended Petition to Cancel, and each cause of action contained therein, is barred by laches.

3. The First Amended Petition to Cancel, and each cause of action contained therein, is barred by waiver.

4. The First Amended Petition to Cancel, and each cause of action contained therein, is barred by acquiescence.

5. The First Amended Petition to Cancel, and each cause of action contained therein, is barred by estoppel.

6. The First Amended Petition to Cancel, and each cause of action contained therein, is barred by unclean hands.

7. Petitioner has not suffered nor is Petitioner likely to suffer any damages or injury due to the issuance or continued registration of United States Trademark Registration No. 2,950,620.

8. Petitioner's purported trademark SPEEDNET is merely descriptive and Petitioner does not hold any enforceable rights in the trademark SPEEDNET under the Lanham Act, at common law or otherwise.

9. Petitioner has not attained acquired distinctiveness in its purported trademark SPEEDNET and Petitioner does not hold any enforceable rights in the trademark SPEEDNET under the Lanham Act, at common law or otherwise.

10. Respondent through its predecessors in interest made use of its SPEEDNET trademark prior to Petitioner's first use of its purported SPEEDNET trademark.

11. Respondent through its own use and the use of its predecessors in interest, attained secondary meaning, enforceable rights under the Lanham Act and under applicable common law, prior to any rights that could be claimed by Petitioner under the Lanham Act, at common law or otherwise.

Respondent reserves the right to raise any and all additional affirmative defenses that may become apparent at any time in the remaining course of the litigation.

WHEREFORE, Respondent prays that the First Amended Petition to Cancel be dismissed in its entirety.

Dated this 9th day of June, 2010.

KEYON COMMUNICATIONS, INC.,
Respondent

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to First Amended Petition was served on Petitioner's counsel:

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via United States via e-mail and first class mail, postage prepaid, on this 9th day of June, 2010.

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